

1 Blaine Bookey (SBN 267596)  
2 Neela Chakravartula (SBN 254746)\*  
3 Kate Jastram (SBN 127625)  
4 Karen Musalo (SBN 106882)  
5 Anne Peterson (SBN 258673)\*  
6 CENTER FOR GENDER & REFUGEE STUDIES  
7 200 McAllister Street  
8 San Francisco, CA 94102  
9 Telephone: (415) 565-4877  
10 Fax: (415) 581-8824  
11 *bookeybl@uchastings.edu*  
12 *neela@uchastings.edu*  
13 *musalok@uchastings.edu*  
14 *jastramkate@uchastings.edu*  
15 *petersonanne@uchastings.edu*

Christine Lin (SBN 239266)  
CGRS-California  
200 McAllister Street  
San Francisco, CA 94102  
Telephone: (415) 565-4877  
Fax: (415) 581-8824  
*linc@uchastings.edu*

9 \*Not admitted in this Court

10 Attorneys for Amici Curiae

11  
12 **IN THE UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN FRANCISCO DIVISION**  
15

16 East Bay Sanctuary Covenant, *et al.*,

17 *Plaintiffs,*

18 v.

19 William P. Barr, *et al.*,

20 *Defendants.*  
21

CASE NO.: 3:19-CV-04073-JST

**MOTION OF AMICI CURIAE NON-  
PROFIT ORGANIZATIONS AND LAW  
SCHOOL CLINICS FOR LEAVE TO FILE  
IN SUPPORT OF PLAINTIFFS' MOTION  
TO CONSIDER SUPPLEMENTAL  
EVIDENCE AND RESTORE THE  
NATIONWIDE SCOPE OF THE  
INJUNCTION**

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT the undersigned non-profit organizations and law school  
3 clinics, move for leave to file a brief as amici curiae in support of Plaintiffs' Motion to Consider  
4 Supplemental Evidence and Restore the Nationwide Scope of the Injunction (Dkt. No. 57). A  
5 copy of the proposed amicus brief, which addresses the impact the rule will have on organizations  
6 serving asylum seekers as well as asylum seekers themselves, is submitted with this motion as  
7 Exhibit A. Counsel for the parties have consented to the relief sought in this motion and to the  
8 filing of a brief. Defendants' consent is contingent upon this brief being filed today, August 19,  
9 2019, and Defendants further reserve the right to raise challenges to the brief's claims.

10 The district court has "broad discretion" to determine when leave to file an amicus brief is  
11 appropriate. *See Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other*  
12 *grounds by Sandin v. Conner*, 515 U.S. 472 (1995), *as recognized by Montijo v. Swaney*, 754  
13 F.App'x 522, 524 (9th Cir. 2018) (unpublished). "District courts frequently welcome amicus  
14 briefs from non-parties concerning legal issues that have potential ramifications beyond the  
15 parties directly involved or if the amicus has 'unique information or perspective that can help the  
16 court beyond the help that the lawyers for the parties are able to provide.'" *NGV Gaming, Ltd. v.*  
17 *Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005) (quoting *Cobell v.*  
18 *Norton*, 246 F. Supp. 2d 59, 62 (D.D.C. 2003)).

19 Here, proposed amici have "unique information or perspective" that can be of assistance  
20 to the court because they are public interest organizations with longstanding commitments to  
21 serving asylum seekers and other immigrants. *Id.* Together these organizations, made up of  
22 recognized experts in the field, have engaged in asylum work and research for decades. Of the  
23 thousands of asylum seekers they represent, a substantial portion of them sought safe haven at the  
24 U.S.-Mexico border and would be barred from protection due to having transited through a third  
25 country under the Administration's latest unlawful attempt to eviscerate the U.S. asylum system  
26 as we have known it for the last four decades. Amici thus have a strong interest in the issues in  
27 this case that impact their core missions and fall within their areas of expertise.

1           **Advocates for Human Rights**, located in Minneapolis, Minnesota, has provided free  
2 legal representation to asylum seekers for more than 30 years. In 2018, with the help of hundreds  
3 of volunteer attorneys, The Advocates provided legal consultation, pro se assistance, and full  
4 representation to over 1100 people fleeing persecution, torture, and trafficking.

5           **Amnesty International USA**, headquartered in New York City, New York, works on the  
6 right to seek asylum.

7           **Asylum Seeker Assistance Project**, located in Washington, D.C., works with asylum  
8 seekers in the DC metropolitan area to rebuild their lives with dignity and purpose and to make  
9 valuable contributions to our community.

10           **Catholic Charities, Immigrant and Refugee Services, New York**, based in New York  
11 City, each year serves thousands of asylum-seekers with their legal defense needs and refugees  
12 with their resettlement needs.

13           **Center for Gender and Refugee Studies**, located in San Francisco, California, which led  
14 the drafting and filing of this brief, advances protections for refugee women, children and others  
15 who flee persecution in their home countries and has played a central role in the development of  
16 law and policy related to asylum and related forms of protection.

17           **Centro Legal de la Raza** is the largest removal defense organization in California, the  
18 second largest in the U.S., and represents asylum seekers directly. The organization serves a large  
19 indigenous Mayan community in the Fruitvale District of Oakland.

20           **Community Justice Alliance**, headquartered in Sacramento, is dedicated to racial and  
21 immigrant justice. Our volunteer attorneys litigate to protect California communities in areas of  
22 removal defense, post conviction relief, and civil rights violation cases.

23           **Community Legal Services in East Palo Alto (CLSEPA)** provides legal assistance to  
24 low-income individuals and families in East Palo Alto, California and the surrounding  
25 community.

26           **Dolores Street Community Services**, located in San Francisco, California, nurtures  
27 individual wellness and cultivates collective power among low-income and immigrant  
28

1 communities; its Deportation Defense and Legal Advocacy Program provides pro bono  
2 representation to indigent and particularly vulnerable immigrant communities, including many  
3 asylum seekers.

4 **HIAS** is the American Jewish community's refugee agency, and the oldest refugee  
5 serving organization in the world. For almost 140 years, HIAS has assisted immigrants and  
6 refugees seeking safety in the United States. Today, based in Silver Spring, HIAS provides legal  
7 services and wrap around support to asylum seekers in the metro Washington, DC region and in  
8 New York City. HIAS also provides legal services to asylum seekers along the Southern Border,  
9 in San Diego and in El Paso, as well as in Ciudad Juarez.

10 **Human Rights Initiative of North Texas** is a non-profit legal services agency in Dallas,  
11 Texas that represents people fleeing humanitarian abuses from all over the world; its clients  
12 include asylum seekers pursuing relief through both affirmative and defensive proceedings.

13 **Immigrant Legal Defense (ILD)** is a nonprofit agency in Oakland dedicated to providing  
14 free immigration legal services to immigrants, asylum seekers, and refugees. ILD's mission is to  
15 promote justice through the provision of legal representation to underserved immigrant  
16 communities.

17 **Immigrant Legal Resource Center (ILRC)** of San Francisco is a national nonprofit  
18 resource center that provides immigration legal trainings, technical assistance, and educational  
19 materials, and engages in advocacy and immigrant civic engagement to advance immigrant rights.  
20 In our work supporting legal advocates, ILRC frequently provides technical advice on asylum  
21 law, and ILRC publishes a widely-used manual on asylum law, *Essentials of Asylum Law* (ILRC,  
22 4th Ed.). ILRC thus has a strong interest in ensuring that federal and international laws providing  
23 a right to seek asylum are followed by the U.S. government.

24 **Immigration and Human Rights Clinic at the District of Columbia** represents  
25 individuals seeking asylum.

26 **International Refugee Assistance Project, Inc.** is a legal advocacy organization for  
27 refugees and displaced people in need of a safe place to call home. Located in New York City, it  
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works with clients to identify and navigate pathways to safety through free direct representation, policy advocacy, and litigation.

**International Rescue Committee**, headquartered in New York City, is the nation's largest refugee resettlement organization with offices in more than 25 cities across the country and 40 countries around the world; it works with asylum seekers along the U.S.-Mexico border as well as on the ground in many of the countries people are fleeing.

**Loyola Immigrant Justice Clinic (LIJC)**, located in Los Angeles, is a non-profit, community-based collaboration of Loyola Law School, Loyola Marymount University, Dolores Mission Parish and Homeboy Industries Inc. LIJC's dual pronged mission is to advance the rights of the indigent immigrant community through direct legal services, education and community empowerment, while teaching law students effective immigrants' rights lawyering in a real-world setting. LIJC offers consultations to, retains, and finds pro bono representation for hundreds of asylum seekers annually, develops programs tailored for asylum seekers, and has clients who will be directly impacted by the current litigation.

**National Justice for Our Neighbors (NJFON)** is headquartered in Annandale, Virginia, and supports nineteen sites nationwide. NJFON provides hospitality and compassion to low-income immigrants through immigration legal services, advocacy, and education.

**National Survivor Network (NSN)** is based in Los Angeles, and is a nonprofit focused on bringing together survivors of diverse kinds of human trafficking to build a national anti-trafficking movement.

**Pangea Legal Services** is a nonprofit legal services organization in San Francisco, California, that supports immigrant communities through direct legal representation, policy advocacy, education, and community empowerment efforts.

**Program for Torture Victims**, located in Los Angeles, California, serves many Central American and African asylum seekers.

**Public Counsel's Immigrants' Rights Project**, located in Los Angeles, California, has been providing pro bono legal representation to asylum seekers for over 30 years before U.S.

1 Citizenship and Immigration Services, the Executive Office for Immigration Review, and the  
2 federal courts.

3 **Sanctuary for Families**, based in New York City, is New York State's largest dedicated  
4 service provider and advocate for survivors of domestic violence, human trafficking, and related  
5 forms of gender violence. Each year, Sanctuary provides legal, clinical, shelter, and economic  
6 empowerment services to approximately 15,000 survivors. Sanctuary's Immigration Intervention  
7 Project provides free legal assistance and direct representation to thousands of immigrant  
8 survivors every year in a broad range of humanitarian immigration matters, including asylum.

9 **University of California, Davis Immigration Law Clinic** defends the rights of asylum  
10 seekers and has an interest in insuring that asylum eligibility follows the rule of law and  
11 international and domestic law.

12 Amici respectfully submit that their proposed brief could aid the court in evaluating the  
13 exceptional importance of the issues presented and the proper application of federal laws to  
14 ensure they are applied uniformly and afford right to asylum protection widely as Congress  
15 intended and our international obligations require.

16 For the foregoing reasons, amici respectfully request that the Court grant leave to file the  
17 attached amicus brief on August 19, 2019.

18 Dated: August 19, 2019

Respectfully submitted,

20 /s/ Blaine Bookey

21 Blaine Bookey  
22 Neela Chakravartula\*  
23 Anne Peterson\*  
24 Karen Musalo  
25 Kate Jastram  
26 Center for Gender & Refugee Studies  
27 UC Hastings College of the Law  
28 200 McAllister Street  
San Francisco, CA 94102

Christine Lin  
CGRS-California  
200 McAllister Street  
San Francisco, California 94102

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P: (415) 565-4877  
F: (415) 581-8824

\*Not admitted in this Court

*Attorneys for Amici Curiae*

# **Exhibit A**



1 Blaine Bookey (SBN 267596)  
2 Neela Chakravartula (SBN 254746)\*  
3 Kate Jastram (SBN 127625)  
4 Karen Musalo (SBN 106882)  
5 Anne Peterson (SBN 258673)\*  
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10 Fax: (415) 581-8824  
11 *bookeybl@uchastings.edu*  
12 *neela@uchastings.edu*  
13 *musalok@uchastings.edu*  
14 *jastramkate@uchastings.edu*  
15 *petersonanne@uchastings.edu*

Christine Lin (SBN 239266)  
CGRS-California  
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San Francisco, CA 94102  
Telephone: (415) 565-4877  
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16 East Bay Sanctuary Covenant, *et al.*,

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19 William P. Barr, *et al.*,

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CASE NO.: 3:19-CV-04073-JST

**BRIEF OF AMICI CURIAE NON-PROFIT  
ORGANIZATIONS AND LAW SCHOOL  
CLINICS IN SUPPORT OF PLAINTIFFS'  
MOTION TO CONSIDER  
SUPPLEMENTAL EVIDENCE AND  
RESTORE THE NATIONWIDE SCOPE  
OF THE INJUNCTION**

**IMMIGRATION ACTION**

## INTRODUCTION AND INTEREST OF AMICI CURIAE

This brief explains why this Court was correct to enjoin the third country asylum rule and why anything other than a nationwide injunction will cause substantial harm to the Plaintiffs and to thousands of migrants in desperate need of protection.

The current Administration has displayed a singular focus over the last two years—to dismantle the U.S. asylum system by executive fiat in circumvention of the law and constitutionally mandated separation of powers. Its previous attempts to thwart the will of Congress and slam the United States’ doors on the persecuted have rightly been blocked by the courts, including this one. *See, e.g., E. Bay Sanctuary Covenant v. Trump*, 349 F. Supp. 3d 838 (N.D. Cal. 2018) (enjoining rule banning asylum for individuals who cross the border outside a port of entry); *O.A. v. Trump*, No. 18-2838, 2019 WL 3536334 (D.D.C. Aug. 2, 2019) (same); *J.O.P. v. U.S. Dep’t of Homeland Sec.*, No. GJH-19-1944, 2019 WL 3536786 (D. Md. Aug. 2, 2019) (enjoining policy stripping unaccompanied children from having their claims first heard in a non-adversarial setting); *Grace v. Whitaker*, 344 F. Supp. 3d 96 (D.D.C. 2018) (enjoining policy categorically foreclosing protection to certain groups of asylum seekers in expedited removal), *appeal docketed*, No. 19-5013 (D.C. Cir. Jan. 30, 2019). Its latest attempt to render ineligible for asylum individuals who transited through a third country before seeking protection at the southern border fared no better before this Court, which correctly enjoined the rule as inconsistent with existing asylum laws that only authorize sending asylum seekers to third countries in limited circumstances—where a Safe Third Country Agreement exists or the applicant is firmly resettled—to ensure “we do not deliver aliens into the hands of their persecutors.” *E. Bay Sanctuary Covenant v. Barr*, 385 F. Supp. 3d 922, 958 (N.D. Cal. 2019).

If permitted to take effect, the rule will have severe consequences across the country, eliminating a critical form of protection with life or death consequences for people long recognized as meriting asylum and violating the United States’ treaty obligations to administer protection without discrimination and to avoid “in any manner whatsoever” returning individuals

1 to danger. Convention Relating to the Status of Refugees, art. 33, ¶ 1, 198 U.N.T.S. 150, 176  
 2 (July 28, 1951) (Refugee Convention).

3 Amici curiae<sup>1</sup> are twenty-four non-profit organizations and law school clinics that  
 4 represent asylum seekers across the country. Of the thousands of asylum seekers they represent, a  
 5 substantial portion of them sought safe haven at the U.S.-Mexico border and would be barred  
 6 from protection from having transited through a third country under the Administration's latest  
 7 unlawful attempt to eviscerate the U.S. asylum system as we have known it for the last four  
 8 decades. Amici thus have a strong interest in the scope of this Court's rightful injunction of this  
 9 unlawful policy; and in the proper application of federal laws to ensure they are applied uniformly  
 10 and afford the right to asylum protection as widely as Congress intended and the United States'  
 11 international obligations require.<sup>2</sup>

12 Amici respectfully urge this Court to issue a new nationwide injunction based on the  
 13 Plaintiffs' supplemented record to ensure uniform administration of our immigration statutes and  
 14 to stop this cruel and unlawful policy that strikes at the core of the United States' fundamental  
 15 values and longstanding laws.

## 16 ARGUMENT

### 17 **I. The Third Country Asylum Rule Would Eliminate Asylum for the Very People U.S.** 18 **Laws Have Long Protected and Result in Refoulement of Bona Fide Refugees.**

19 Because this Court has already correctly concluded that the new rule is likely unlawful,  
 20 amici provide only a brief overview of the merits.<sup>3</sup>

21 Individuals seeking asylum at the United States' southern border are fleeing gender-based  
 22 violence, violence perpetrated by gangs, and politically, racially and religiously motivated

23 <sup>1</sup> Amici are listed and described in the accompanying Motion for Leave to File this Amicus Brief.

24 <sup>2</sup> The parties consent to this filing. Defendants' consent is contingent upon this brief being filed  
 25 today, August 19, 2019, and Defendants further reserve the right to raise challenges to the brief's  
 26 claims. No person or entity other than amici authored or contributed funds intended for its  
 preparation or submission.

27 <sup>3</sup> Amici agree with Plaintiffs' clear and cogent arguments, not repeated in this brief, regarding the  
 28 inconsistency between the rule and the Safe Third Country and firm resettlement statutory  
 provisions.

1 persecution, among other heinous acts. *See, e.g.*, Administrative Record (AR) 293-95. There are  
 2 many reasons asylum seekers fleeing this sort of violence are often unable to take a direct route to  
 3 the United States, including the exigent circumstances of their flight and the lack of visas that  
 4 would permit them to board a plane to the U.S. to seek asylum. The immigration agency and the  
 5 courts have recognized this reality—that asylum seekers may pass through multiple countries  
 6 while searching for refuge but continue on to the United States because they cannot find safety in  
 7 the transited countries, or because they wish to reunify with family in the United States. *See, e.g.*,  
 8 *Gulla v. Gonzales*, 498 F.3d 911, 917 (9th Cir. 2007); *Matter of Pula*, 19 I&N Dec. 467, 474  
 9 (B.I.A. 1987).

10 Since passage of the Refugee Act in 1980, these individuals have been eligible for asylum  
 11 so long as they satisfy the stringent burden of establishing they meet the definition of a refugee.  
 12 *See* 8 U.S.C. §§ 1101(a)(42), 1158. The Administration aims to uproot Congress’ long held and  
 13 unambiguous intent regarding the scope of the United States’ asylum laws. Under the new rule,  
 14 asylum seekers who fail to apply for protection from persecution or torture in at least one country  
 15 before coming to the United States “shall be found ineligible for asylum,” subject to only limited  
 16 exceptions. 8 C.F.R. § 208.13(c)(4). This complete ban would eviscerate the U.S. asylum system,  
 17 stripping this life saving protection for all non-Mexican asylum seekers entering at the southern  
 18 border, who necessarily will have transited through a third country.

19 The practical effect of this rule would be to force asylum seekers to seek protection in  
 20 Mexico or Guatemala, which will undoubtedly result in U.S. violations of the duty of non-  
 21 refoulement wherever it is permitted to take effect. Refugee Convention, Article 33.1. News  
 22 outlets, human rights organizations, the U.N. High Commissioner for Refugees (UNHCR), and  
 23 the U.S. government have all documented the extreme dangers for migrants and shortcomings of  
 24 the asylum processes in both countries. *See, e.g.*, AR 636-37 (Wall Street Journal article); 700  
 25 (Reuters article), 703 (Human Rights First Factsheet), 721-24 (Amnesty International report).  
 26 Moreover, the rule violates the principle of non-discrimination found in Article 3 of the Refugee  
 27 Convention and the U.S. refugee protection system by precluding from asylum protection any  
 28

1 non-Mexican fleeing persecution who is unable to enter by air, or sea, and therefore arrives at a  
 2 land port of entry. *See Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1059-60 (9th Cir. 2017) (en  
 3 banc) (examining history of the Refugee Act leading to the “nondiscriminatory definition of  
 4 refugee”). In doing so, it clearly places cruel and manifestly unsafe obstacles in front of asylum  
 5 seekers traveling by land from non-contiguous countries. Like its previous policies intent on  
 6 eliminating the United States’ asylum system by decree, the Administration’s new rule is patently  
 7 unlawful in flagrant violation of the United States’ bedrock domestic and international obligations  
 8 to protect the persecuted.

## 9 **II. A Nationwide Injunction is Necessary to Avert the Grave Consequences of** 10 **Permitting Third Country Asylum Rule to Take Effect.**

11 The third country asylum rule will cause harm to asylum seekers and their representatives  
 12 across the country. To start, applying a different rule within the Ninth Circuit is not administrable  
 13 given that asylum seekers, in amici’s vast experience, often do not appear in the same jurisdiction  
 14 throughout the life of their case. Even though an asylum seeker may seek protection at a border  
 15 point within the Ninth Circuit, for example, she may be transferred to a detention center in New  
 16 Jersey and then, if able to secure release, end up before an immigration judge in Florida (and even  
 17 later move and change venue to California). Moreover, ensuring that asylum seekers moving  
 18 across jurisdictions have accurate information as to their eligibility for protection will be  
 19 extremely difficult, made exponentially more so for those without an attorney. As many courts  
 20 have recognized, asylum law, including its accompanying procedures, is one of the most complex  
 21 areas of U.S. law and availability of this protection should not be left to chance. Moreover,  
 22 offering asylum in one jurisdiction but denying that same life-saving protection in the rest of the  
 23 country violates the important principle of uniformity, as well as the United States’ domestic and  
 24 international obligations.

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## CONCLUSION

Amici support the issuance of a nationwide injunction, and they respectfully request that the Court grant Plaintiffs' request.

Dated: August 19, 2019

Respectfully submitted,

/s/ Blaine Bookey

Blaine Bookey  
Neela Chakravartula\*  
Anne Peterson\*  
Karen Musalo  
Kate Jastram  
Center for Gender & Refugee Studies  
UC Hastings College of the Law  
200 McAllister Street  
San Francisco, CA 94102

Christine Lin  
CGRS-California  
200 McAllister Street  
San Francisco, California 94102  
P: (415) 565-4877  
F: (415) 581-8824

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*Attorneys for Amici Curiae*

**LIST OF AMICI**

Amnesty International  
New York, New York

Asylum Seeker Assistance Project  
Washington, D.C.

Catholic Charities, Immigrant and Refugee Services  
New York, New York

Center for Gender & Refugee Studies  
San Francisco, California

Centro Legal de La Raza  
Oakland, California

Community Justice Alliance  
Sacramento, California

Community Legal Services in East Palo Alto  
East Palo Alto, California

Dolores Street Community Services  
San Francisco, California

HIAS  
Silver Spring, Maryland

Human Rights Initiative of North Texas  
Dallas, Texas

Immigrant Legal Defense  
Oakland, California

Immigrant Legal Resource Center  
San Francisco, California

Immigration and Human Rights Clinic, University of the District of Columbia Law School  
Washington, D.C.

International Refugee Assistance Project, Inc.  
New York, New York

International Rescue Committee (IRC)  
New York, New York

Loyola Immigrant Justice Clinic  
Los Angeles, California

National Justice For Our Neighbors  
Annandale, Virginia

1 National Survivor Network  
2 Los Angeles, California

3 Pangea Legal Services  
4 San Francisco, California

5 Program for Torture Victims (PTV)  
6 Los Angeles, California

7 Public Counsel  
8 Los Angeles, California

9 Sanctuary for Families  
10 New York, New York

11 The Advocates for Human Rights  
12 Minneapolis, Minnesota

13 UC Davis Immigration Law Clinic  
14 Davis, California

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10 NORTHERN DISTRICT OF CALIFORNIA  
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12 East Bay Sanctuary Covenant, *et al.*,

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16 *Defendants.*

CASE NO.: 3:19-CV-04073-JST

**[PROPOSED] ORDER GRANTING  
MOTION OF NON-PROFIT  
ORGANIZATIONS AND LAW SCHOOL  
CLINICS FOR LEAVE TO FILE AN  
AMICUS CURIAE BRIEF**

IT IS SO ORDERED.

Hon. Jon S. Tigar